

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

(1) **DEDRICK D. REED,**

Plaintiff,

vs.

(1) **H & H ROAD BORING CO.,**

Defendant.

Case No. 14-CV-423-CVE-FHM

**NOTICE OF REMOVAL**

**COMES NOW** the Defendant, **H & H ROAD BORING COMPANY** (Defendant) by and through its attorney, Randall A. Gill, and pursuant to 28 U.S.C. §§1441 and 1446, hereby removes this action from the District Court of Rogers County, State of Oklahoma, to the United States District Court for the Northern District of Oklahoma. This action may be removed because this Court has a original jurisdiction pursuant to 28 U.S.C. §1331 and supplemental jurisdiction pursuant to 28 U.S.C. §1367. In support of removal, the Defendant would state as follows:

1. On July 11, 2014, the Plaintiff, **DEDRICK D. REED** (Plaintiff) commenced an Amended Petition in the District Court of Rogers County, State of Oklahoma entitled *Detrick D. Reed vs. H & H Road Boring Company*, Case No. CJ-2014-157 (originally styled H & H Boring Co.) which alleges violations of 42 U.S.C. §200(e), *et seq.*, 42 U.S.C. §1981 (civil rights), Title 7 of the Civil Rights Act of 1964, and seeks damages under the United States Code for alleged racial discrimination, work environment retaliation, discrimination based on race which are pled as actions under the United States Code for all claims of relief. A copy of the Docket Sheet, all process, pleadings, papers and Order served in the State Court action are attached to this Notice of Removal

as Exhibits 1 through 5, as required by 28 U.S.C. §1446(a) and LCVR 81.2, except as otherwise stated in its Answer to be filed subsequent to removal, Defendants deny all substantive allegations.

2. Plaintiff originally filed its action against H & H Boring Company of Guthrie, Oklahoma which is not one and the same entity as H & H Road Boring Company of Inola, Oklahoma. A Motion to Quash and/or Dismiss was filed H & H Road Boring Company as improper service and Defendant. The original Summons and Petition was against H & H Boring Company, Guthrie, Oklahoma, and not H & H Road Boring Company, Inola, Oklahoma.

3. Thereafter, on July 11, 2014 rather than respond to the Motion to Dismiss and/or Quash, the Plaintiff elected to file his Amended Petition against H & H Road Boring Company (correct party and entity) and served Summons by certified mail on the correct entity with correct Summons known as H & H Road Boring Company. Service was made on July 16, 2014. The Answer date will be August 5, 2014.

4. Now that the proper entity has been identified and served, the Defendant seeks removal to this Court.

5. This Notice of Removal is timely filed pursuant to 28 U.S.C. §1446, because it is filed within 30 days of the date on which Defendant was served on July 16, 2014 with the Petition.

6. This is a civil action over which this Court has original jurisdiction based on federal questions pursuant to 28 U.S.C. §1331 and supplemental jurisdiction pursuant to 28 U.S.C. §1367, because all claims raised by Plaintiff arise from the same matter or controversy. As such, this matter may be removed to this Court under the provisions of 28 U.S.C. §1441(a).

7. Plaintiff alleges that his employment with the Defendant was terminated as the result of discrimination based on race (Title 7), civil rights (42 U.S.C. §1981), hostile work environment

(Title 7), retaliation (Title 7) and intentional infliction of emotional distress based upon all of the above federally based theories of recovery under federal statutes.

8. Pursuant to the U. S. Code, Plaintiff's claims alleging his employment was effected by federal statutes creates a claim over which this Court has original jurisdiction. The case or controversy at issue for such a claim is based upon the alleged circumstances of Plaintiff's employment and alleged termination of that employment.

9. The circumstances of Plaintiff's employment and termination are also the issue in Plaintiff's tort claim of intentional infliction of emotional distress, which alleges extreme and outrageous conduct to cause severe emotional and psychological damage all based upon the federal claims/statutes at issue.

10. All the federal and state common law claims arise from Plaintiff's employment and the alleged termination of his employment, and as such this Court may exercise supplemental jurisdiction over Plaintiff's single state law claim arising out of purported violations of federal statutes pursuant to U.S.C. §1367.

11. Venue is proper in this district pursuant to 28 U.S.C. §1441(a) because this district embraces Rogers County in which the removed action has been pending.

12. The pleadings are attached hereto as Exhibit 1 through 5, and constitute all the process, pleadings, and Orders served upon the Defendants in this action to date.

13. Defendant will promptly serve Plaintiff of this Notice of Removal and will promptly file a Notice of this removal with clerk of the District Court of Rogers County, State of Oklahoma, as required under 28 U.S.C. §1446(d).

**WHEREFORE**, premises considered, Defendant respectfully requests that the above action now pending in the District Court of Rogers County, State of Oklahoma entitled *Detrick D. Reed*



vs. *H & H Road Boring Company*, Case No. CJ-2014-157 be removed to the United States District Court for the Northern District of Oklahoma.

Respectfully submitted,

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**RANDALL A. GILL**, OBA #10309  
2512 East 21<sup>st</sup> Street  
Tulsa, Oklahoma 74114-1706  
(918) 747-1958  
(918) 747-1108 fax

**CERTIFICATE OF SERVICE**

This is to certify on the date listed below that a true and correct copy of the above and foregoing document was:

7/24/13  
\_\_\_\_\_  
\_\_\_\_\_

Mailed with postage prepaid thereon;  
Faxed;  
Hand Delivered

to the following person(s):

Daniel E. Smolen  
SMOLEN & SMOLEN, PLLC  
701 South Cincinnati Avenue  
Tulsa, Oklahoma 74119

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Randall A. Gill





Home Courts Court Dockets Legal Research Calendar Help

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## IN THE DISTRICT COURT IN AND FOR ROGERS COUNTY, OKLAHOMA

Dedrick D. Reed	No. CJ-2014-157
vs.	(Civil relief more than \$10,000: DISCRIMINATION)
(1) H & H Boring co., a domestic for profit business corporation	Filed: 04/15/2014
	Judge: Post, Dynda R.

### Parties

H & H Boring Company , Defendant  
Reed, Dedrick , Plaintiff

### Attorneys

#### Attorney

Gill, Randall A.(Bar # 10309)  
Gill Law Firm  
2512 E 21st Street  
Tulsa, OK 74114

#### Represented Parties

H & H Boring Company,

Smolen, Daniel E(Bar # 19943)  
Smolen & Smolen  
701 S. Cincinnati Ave.  
Tulsa, OK 74119

Reed, Dedrick

### Events

Event	Party	Docket	Reporter
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### Issues

For cases filed before 1/1/2000, ancillary issues may not appear except in the docket.

#### Issue # 1.

Issue: DISCRIMINATION (DISCRIM)

Filed by: Reed, Dedrick

Filed Date: 04/15/2014

#### Party Name:

#### Disposition Information:

Pending.

Exhibit 1

**Docket**

<b>Date</b>	<b>Code</b>	<b>Count</b>	<b>Party</b>	<b>Serial #</b>	<b>Entry Date</b>		
04-15-2014	TEXT	1		6053191	Apr 15 2014 2:35:14:447PM	-	\$ 0.00
	CIVIL RELIEF MORE THAN \$10,000 INITIAL FILING.  Document Available at Court Clerk's Office						
04-15-2014	DISCRIM	-		6053193	Apr 15 2014 2:02:14:937PM	Realized	\$ 0.00
	DISCRIMINATION						
04-15-2014	DMFE	-		6053194	Apr 15 2014 2:02:14:957PM	Realized	\$ 2.00
	DISPUTE MEDIATION FEE(\$ 2.00)						
04-15-2014	PFE1	-		6053195	Apr 15 2014 2:34:45:857PM	Realized	\$ 163.00
	PETITION(\$ 163.00)  Document Available (#1024961394)						
04-15-2014	PFE7	-		6053196	Apr 15 2014 2:02:14:957PM	Realized	\$ 6.00
	LAW LIBRARY FEE(\$ 6.00)						
04-15-2014	OCISR	-		6053197	Apr 15 2014 2:02:14:957PM	Realized	\$ 25.00
	OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND(\$ 25.00)						
04-15-2014	CCADMIN02	-		6053198	Apr 15 2014 2:02:14:957PM	Realized	\$ 0.20
	COURT CLERK ADMINISTRATIVE FEE ON \$2 COLLECTIONS(\$ 0.20)						
04-15-2014	OCJC	-		6053199	Apr 15 2014 2:02:14:957PM	Realized	\$ 2.00
	OKLAHOMA COUNCIL ON JUDICIAL COMPLAINTS REVOLVING FUND(\$ 2.00)						
04-15-2014	OCASA	-		6053200	Apr 15 2014 2:02:14:957PM	Realized	\$ 5.00
	OKLAHOMA COURT APPOINTED SPECIAL ADVOCATES(\$ 5.00)						
04-15-2014	CCADMIN04	-		6053201	Apr 15 2014 2:02:14:957PM	Realized	\$ 0.50
	COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS(\$ 0.50)						
04-15-2014	LTF	-		6053202	Apr 15 2014 2:02:15:057PM	Realized	\$ 10.00
	LENGTHY TRIAL FUND(\$ 10.00)						
04-15-2014	SMF	-		6053203	Apr 15 2014 2:02:15:107PM	Realized	\$ 5.00
	SUMMONS FEE (CLERKS FEE)(\$ 5.00)						
04-15-2014	TEXT	-		6053192	Apr 15 2014 2:02:14:887PM	-	\$ 0.00
	OCIS HAS AUTOMATICALLY ASSIGNED JUDGE POST, DYNDRA R. TO THIS CASE.						
04-15-2014	ACCOUNT	-		6053209	Apr 15 2014 2:05:15:647PM	-	\$ 0.00

RECEIPT # 2014-425090 ON 04/15/2014.

PAYOR:SMOLEN &amp; SMOLEN, PLLC TOTAL AMOUNT PAID: \$218.70.

## LINE ITEMS:

CJ-2014-157: \$168.00 ON AC01 CLERK FEES.

CJ-2014-157: \$6.00 ON AC23 LAW LIBRARY FEE.

CJ-2014-157: \$0.70 ON AC31 COURT CLERK REVOLVING FUND.

CJ-2014-157: \$5.00 ON AC58 OKLAHOMA COURT APPOINTED SPECIAL ADVOCATES.

CJ-2014-157: \$2.00 ON AC59 OKLAHOMA COUNCIL ON JUDICIAL COMPLAINTS REVOLVING FUND.

CJ-2014-157: \$2.00 ON AC64 DISPUTE MEDIATION FEES.


CJ-2014-157: \$25.00 ON AC79 OCIS REVOLVING FUND.

CJ-2014-157: \$10.00 ON AC81 LENGTHY TRIAL FUND.

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05-21-2014 SMS	-	6103620	May 22 2014 8:37:11:233AM	-	\$ 0.00
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SUMMONS RETURNED, SERVED: H &amp; H BORING CO BY CERTIFIED MAIL

 [Document Available \(#1025789914\)](#)


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06-03-2014 EAA	-	6118801	Jun 3 2014 11:50:44:973AM	-	\$ 0.00
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ENTRY OF APPEARANCE AND RESERVATION OF TIME IN WHICH TO FURTHER ANSWER OR PLEAD

 [Document Available \(#1026041222\)](#)


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06-23-2014 MO	-	6143663	Jun 23 2014 1:56:35:317PM	-	\$ 0.00
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MOTION TO QUASH AND/OR DISMISS

 [Document Available \(#1026359623\)](#)


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07-11-2014 SMF	-	6166820	Jul 11 2014 9:10:18:547AM	Realized	\$ 5.00
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SUMMONS FEE (CLERKS FEE)(\$ 5.00)

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07-11-2014 AM	-	6167147	Jul 11 2014 2:42:23:507PM	-	\$ 0.00
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AMENDED PETITION

 [Document Available \(#1026559177\)](#)


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07-11-2014 ACCOUNT	-	6166821	Jul 11 2014 9:10:46:107AM	-	\$ 0.00
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RECEIPT # 2014-433366 ON 07/11/2014.

PAYOR:SMOLEN AND SMOLEN PLLC TOTAL AMOUNT PAID: \$5.00.

LINE ITEMS:

CJ-2014-157: \$5.00 ON AC01 CLERK FEES.

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07-21-2014 SMS	-	6178732	Jul 21 2014 4:14:22:190PM	-	\$ 0.00
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SUMMONS RETURNED, SERVED: H&amp;H ROAD BORING CO. ON 7/16/14 THROUGH CERTIFIED MAIL.

 [Document Available \(#1026648824\)](#)


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 Report Generated by The Oklahoma Court Information System at July 23, 2014 11:54 AM
 

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End of Transmission.



**IN THE DISTRICT COURT IN AND FOR ROGERS COUNTY  
STATE OF OKLAHOMA**

DEDRICK D. REED,

Plaintiff,

vs.

(1) H & H ROAD BORING CO.,

Defendant.

CASE NO. CJ-2014-157

ATTORNEY LIEN CLAIMED

FILED IN DISTRICT COURT  
ROGERS COUNTY OKLAHOMA

JUL 11 2014

KRAEMER COURT CLERK

**AMENDED PETITION**

COMES NOW the Plaintiff, Dedrick Reed, through his attorneys of record, Daniel E. Smolen and Lauren G. Lambright, and brings this action against the Defendant, H & H Boring Co., for violations of his constitutionally protected rights arising out of his employment and termination by said Defendant.

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff is a resident of Tulsa County.
2. Defendant is a corporation regularly doing business in Rogers County, Oklahoma.
3. The incidents and occurrences which form the basis of Plaintiff's action occurred in Rogers County.
4. This Court has jurisdiction and venue is proper in Rogers County.
5. Plaintiff filed a charge of discrimination against the Defendant with the Equal Employment Opportunity Commission ("EEOC"). A Notice of Right to Sue was received by each Plaintiff on or about January 16, 2014, and this Petition has been

filed within ninety days (90) of the receipt of the Notice of Right to Sue. As such, Plaintiff has complied fully with all prerequisites in this Court under Title VII.

6. Actual and compensatory damages are sought pursuant to 42 U.S.C. § 2000e, *et seq.* and 42 U.S.C. § 1981.

7. Punitive damages are sought pursuant to 42 U.S.C. § 1981.

8. Costs and attorney's fees may be awarded pursuant to 42 U.S.C. § 2000e, *et seq*

#### **FACTS COMMON TO ALL CLAIMS**

9. Plaintiff is an African-American male.

10. Plaintiff was an employee of Defendant until his termination on or about January 28, 2013. Plaintiff was employed as a Crew Worker and Driver.

11. Upon his hire, Plaintiff was the only African American employee of the company. During his employment, he was subjected to disparate treatment on the basis of his race. Specifically, Plaintiff endured racial slurs, unequal terms and conditions of employment, and a hostile work environment in comparison to his Caucasian coworkers. Furthermore, when Plaintiff questioned this treatment and complained about it to his supervisor, he suffered retaliation at the hands of Defendant.

12. Specifically, one employee, "Zake," constantly called Plaintiff a "nigga" and also called him "Obama." Additionally, the owner, Mr. Gerald Hail, told Plaintiff to run at Hail's son's request because this was something Hail's son enjoyed watching. Even though Plaintiff complained to the owner, Gerald Hail, Defendant did nothing to address the derogatory language and hostile environment. The hostile

environment was severe and pervasive and made it difficult for Plaintiff to continue working.

13. In addition to the racial slurs Plaintiff endured, he was also treated differently. Specifically, Defendant informed Plaintiff that he would not receive insurance because the "Obama Health Plan" was too expensive. Yet no other similarly situated Caucasian employee was denied insurance on this basis. Plaintiff was treated worse than his Caucasian co-workers because of his race.

14. Defendant also lowered Plaintiff's pay by two dollars an hour without any warning or any deficient work performance on Plaintiff's part. Defendant also singled out Plaintiff as the only employee to be paid "under the table." No other Caucasian co-worker was treated this way and Defendant lowered Plaintiff's pay and paid him "under the table" because of Plaintiff's race.

15. When Plaintiff attempted to voice his concerns about the disparate treatment and rectify the situation, the Defendant retaliated against and fired him on January 28, 2013. Plaintiff's termination was a culmination of the racially hostile work environment, based upon his race and was in retaliation for Plaintiff reporting the race discrimination and hostile work environment he was experiencing.

**FIRST CLAIM FOR RELIEF**  
**DISCRIMINATION BASED ON RACE (TITLE VII)**

16. Plaintiff incorporates as if realleged the preceding paragraphs.

17. By terminating the Plaintiff and treating him differently than similarly situated Caucasian employees, the Defendant has violated Title VII of the Civil Rights Act of 1964.

WHEREFORE, Plaintiff prays for judgment against the Defendant for:



- a. Back pay and lost benefits; front pay until normal retirement
- b. Compensatory damages for his mental anguish, pain and suffering and other non-pecuniary losses;
- c. Punitive damages for the intentional and knowing acts of discrimination committed by the management and executives at Joe Cooper Ford;
- d. His attorney fees and the costs and expenses of this action;
- e. Such other relief as the Court deems just and equitable.

**SECOND CLAIM FOR RELIEF**  
**42 U.S.C. § 1981**

- 18. Plaintiff incorporates as if realleged the preceding paragraphs.
- 19. By terminating the Plaintiff and treating him different than similarly situated Caucasian employees, the Defendant has violated 42 U.S.C. § 1981.

WHEREFORE, Plaintiff prays for judgment against the Defendant for:

- a. Back pay and lost benefits; front pay until normal retirement
- b. Compensatory damages for his mental anguish, pain and suffering and other non-pecuniary losses;
- c. Punitive damages for the intentional and knowing acts of discrimination committed by the management and executives at Joe Cooper Ford;
- d. His attorney fees and the costs and expenses of this action;
- e. Such other relief as the Court deems just and equitable.

**THIRD CLAIM FOR RELIEF**  
**HOSTILE WORK ENVIRONMENT (TITLE VII)**

- 20. Plaintiff incorporates as if realleged the preceding paragraphs.
- 21. The conduct and attitude of Plaintiff's supervisors and coworkers toward Plaintiff combined with their disparaging remarks regarding Plaintiff's race were so

severe and pervasive that they altered the conditions of employment and created a hostile working environment.

22. By subjecting Plaintiff to a hostile work environment based upon race and failing to ensure a non-hostile work environment, and ultimately terminating the Plaintiff's employment, the Defendant has violated Title VII of the Civil Rights Act of 1964.

WHEREFORE, Plaintiff prays for judgment against the Defendant for:

- a. Back pay and lost benefits; front pay until normal retirement
- b. Compensatory damages for his mental anguish, pain and suffering and other non-pecuniary losses;
- c. Punitive damages for the intentional and knowing acts of discrimination committed by the management and executives at Joe Cooper Ford;
- d. His attorney fees and the costs and expenses of this action;
- e. Such other relief as the Court deems just and equitable.

**FOURTH CLAIM FOR RELIEF**  
**RETALIATION (TITLE VII)**

23. Plaintiff incorporates as if realleged the preceding paragraphs.

24. Plaintiff complained about the disparity in treatment and hostile work environment based upon his race.

25. By terminating Plaintiff's employment in retaliation for his complaints regarding the unfair treatment and hostile work environment, Defendant has violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-3(a).

WHEREFORE, Plaintiff prays for judgment against the Defendant for:

- a. Back pay and lost benefits; front pay until normal retirement
- b. Compensatory damages for his mental anguish, pain and suffering and other non-pecuniary losses;

- c. Punitive damages for the intentional and knowing acts of discrimination committed by the management and executives at Joe Cooper Ford;
- d. His attorney fees and the costs and expenses of this action;
- e. Such other relief as the Court deems just and equitable.

**FIFTH CLAIM FOR RELIEF**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

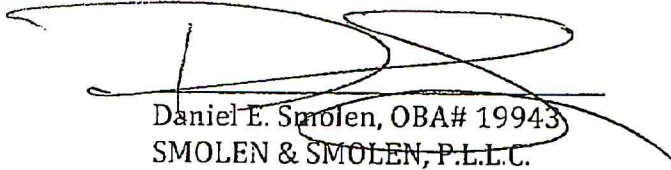
26. Plaintiff incorporates as if realleged the preceding paragraphs.
27. The Defendant's actions of intentional and malicious discrimination and retaliation are extreme and outrageous and have caused severe emotional and psychological damage to the Plaintiff.
28. The Defendant intentionally or recklessly caused severe emotional distress to Plaintiff beyond which a reasonable person could be expected to endure.

WHEREFORE, Plaintiff prays for judgment against the Defendant for:

- a. Back pay and lost benefits; front pay until normal retirement
- b. Compensatory damages for his mental anguish, pain and suffering and other non-pecuniary losses;
- c. Punitive damages for the intentional and knowing acts of discrimination committed by the management and executives at Joe Cooper Ford;
- d. His attorney fees and the costs and expenses of this action;
- e. Such other relief as the Court deems just and equitable



Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Smolen', is written over the printed name and firm name.

Daniel E. Smolen, OBA# 19943

SMOLEN & SMOLEN, P.L.L.C.

701 S. Cincinnati Ave.,

Tulsa, OK 74119

P: (918) 585-2667

F: (918) 585-2669

Attorneys for Plaintiff

**IN THE DISTRICT COURT IN AND FOR ROGERS COUNTY  
STATE OF OKLAHOMA**

DEDRICK D. REED,

Plaintiff,

vs.

(1) H & H ROAD BORING CO.,

Defendant.

CASE NO. CJ-2014-157

ATTORNEY LIEN CLAIMED

**ORIGINAL SUMMONS**

**SERVE BY U.S. CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

H & H Road Boring Co.  
c/o Gerald Hail  
14157 East 580 Road  
Inola, OK 74036

To the above-named Defendant(s)

You have been sued by the above named plaintiff(s), and you are directed to file a written answer to the attached petition and order in the court at the above address within twenty (20) days after service of this summons upon you exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorney for the plaintiff. Unless you answer the petition within the time stated judgment will be rendered against you with costs of the action.

Issued this 11 day of July, 2014

Kim Henry, Court Clerk  
County Court Clerk

By

Deux Sappington  
Deputy Court Clerk

(Seal)

This summons and order was served on

\_\_\_\_\_  
(Signature of person serving summons)

YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THIS SUMMONS.

**Return ORIGINAL for filing.**

Exhibit 3

**PERSONAL SERVICE**

I certify that I received the foregoing Summons the \_\_\_\_\_ day of \_\_\_\_\_, 2014, and that I delivered a copy of said Summons with a copy of the Petition to the following named defendant personally in \_\_\_\_\_ County, \_\_\_\_\_ at the address and on the date set forth opposite each name, to-wit:

Name of Defendant

Address

Date of Service

**USUAL PLACE OF RESIDENCE**

I certify that I received the foregoing Summons on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, and that on \_\_\_\_\_, I served \_\_\_\_\_ by leaving a copy of said summons with a copy of the attached Petition at \_\_\_\_\_, which is his/her dwelling house or usual place of abode, with \_\_\_\_\_, a person then residing therein, who is fifteen (15) years of age or older.

**NOT FOUND**

Received this Summons this \_\_\_\_\_ day of \_\_\_\_\_, 2014. I certify that the following persons of the defendant within named not found in said County:

**FEES**

Fee for service \$ \_\_\_\_\_, Mileage \$ \_\_\_\_\_,

Total \$ \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

By:

Sheriff of \_\_\_\_\_ County,

**AFFIDAVIT**

I, \_\_\_\_\_, the undersigned, under oath, do say that I served this Summons and made the return thereon, according to law that I am duly authorized to make this affidavit so help me God.

Sheriff of \_\_\_\_\_ County,

Subscribed to and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

My Commission Expires: \_\_\_\_\_

Seal

Notary Public

**CERTIFICATE OF SERVICE BY MAIL**

I certify that I mailed copies of the foregoing summons with a copy of the Petition to the following named defendant at the address shown by certified mail, addressee only, return receipt requested, on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, and receipt thereof on the dates shown:

Defendant  
Received

Address Where Served

Date

Signature of person mailing summons



H&H Road Boring

918-543-3766

p.11

**CERTIFICATE OF SERVICE BY MAIL**

I certify that I mailed copies of the foregoing summons with a copy of the Petition to the following named defendant at the address shown by certified mail, addressee only, return receipt requested, on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, and receipt thereof on the dates shown:

Defendant  
Received

Address Where Served

Date

Signature of person mailing summons

**H & H BORING COMPANY**

## Details

Filing Number: 1900285683  
Name Type: Legal Name  
Status: In Existence  
Corp type: Domestic For Profit Business Corporation  
Jurisdiction: Oklahoma  
Formation Date: 19 Aug 1975

## Registered Agent Information

Name: ELLEN L. HILL  
Effective: N/A  
Address: RT.5 BOX 646  
City, State , ZipCode: GUTHRIE OK

IN THE DISTRICT COURT IN AND FOR ROGERS COUNTY  
STATE OF OKLAHOMA

DEDRICK D. REED,

Plaintiff,

vs.

(1) H & H BORING CO., a domestic  
for profit business corporation

Defendant.

CASE NO.

CJ-2014-157

ATTORNEY LIEN CLAIMED

ORIGINAL SUMMONS

SERVE BY U.S. CERTIFIED MAIL, RETURN RECEIPT REQUESTED

H & H Boring Co.  
c/o Ellen L. Hill  
Rt. 5 Box 646  
Guthrie, OK 73044

To the above-named Defendant(s)

You have been sued by the above named plaintiff(s), and you are directed to file a written answer to the attached petition and order in the court at the above address within twenty (20) days after service of this summons upon you exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorney for the plaintiff. Unless you answer the petition within the time stated judgment will be rendered against you with costs of the action.

Issued this 15<sup>th</sup> day of April, 2014

Kim Henry  
County Court Clerk

By

David L. Davis  
Deputy Court Clerk

(Seal)

This summons and order was served on

\_\_\_\_\_  
(Signature of person serving summons)

YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THIS SUMMONS.

**Return ORIGINAL for filing.**

\_\_\_\_\_, I served \_\_\_\_\_ by leaving a copy of said summons with a copy of the attached Petition at \_\_\_\_\_, which is his/her dwelling house or usual place of abode, with \_\_\_\_\_, a person then residing therein, who is fifteen (15) years of age or older.

**NOT FOUND**

Received this Summons this \_\_\_\_\_ day of \_\_\_\_\_, 2014. I certify that the following persons of the defendant within named not found in said County:

**FEES**

Fee for service \$ \_\_\_\_\_, Mileage \$ \_\_\_\_\_

Total \$ \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

By:

Sheriff of \_\_\_\_\_ County,

Exhibit 4



5708.40  
closed

IN THE DISTRICT COURT IN AND FOR ROGERS COUNTY  
STATE OF OKLAHOMA

**DEDRICK D. REED,**

Plaintiff,

vs.

**H & H BORING CO.,** a domestic  
for profit business corporation,

Defendant.

Case No. CJ-2014-157

FILED IN THE DISTRICT COURT  
ROGERS COUNTY OKLAHOMA

JUN 23 2014

KIM HENRY, COURT CLERK

**MOTION TO QUASH AND/OR DISMISS**

COMES NOW **H & H ROAD BORING COMPANY, LLC** and moves this Court pursuant to 12 O. S. §2012(B)(2)(4)(5) to dismiss the Petition against third party, **H & H Road Boring Company, LLC**. In support, **H & H Road Boring Company LLC** would show the Court as follows:

1. Plaintiff, Dedrick D. Reed, filed his claim against **H & H Boring Company**, a domestic for profit corporation.
2. The Summons served on **H & H Road Boring Company** was addressed to **H & H Boring Company c/o Ellen L. Hill, Route 5, Box 646, Guthrie, Oklahoma 73044**. Attached as Exhibit 1 is a copy of the Petition and attached as Exhibit 2 is a copy of the Summons.
3. The Summons of **H & H Boring Company** was served on **H & H Road Boring Company, LLC** at 14157 East 580 Road, Inola, Oklahoma 74036. **H & H Boring Company**, the Defendant sued in this action, is not one and the same as **H & H Road Boring Company, LLC**. They are two separate unrelated entities.

4. The Plaintiff has sued the wrong entity and served H & H Road Boring Company, LLC with an improper Summons identifying another entity in Guthrie, OK. The original Summons was issued to H & H Boring Company, c/o Ellen L. Hill.

5. Service of a Summons upon H & H Boring Company cannot effectuate service on H & H Road Boring Company, LLC.

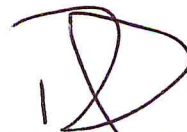
6. The Petition should be quashed against H & H Road Boring Company for insufficient and improper service upon a non-named Defendant in the legal action and the Petition dismissed.

7. Attached as Exhibit 3 is an Affidavit of Gerald Hail, Manager of H & H Road Boring Company, LLC in support of this motion.

8. H & H Road Boring Company, LLC is not an actual named party to the action as plead by Dedrick D Reed. The only entity sued is H & H Boring Company of Route 5, Box 646, Guthrie, Oklahoma as shown on the Summons. It was the intent of the Plaintiff in the issuance of the original Summons to apparently sue H & H Boring Company at the Guthrie address.

9. H & H Road Boring Company, LLC is not an actual party to this action and service of process upon H & H Road Boring Company, LLC is improper and should be quashed by this Court as improper service upon a non-party to the lawsuit.

**WHEREFORE**, premises considered, H & H Road Boring Company, LLC requests that this Court quash the service of summons and dismiss the Petition of the Plaintiff against H & H Road Boring Company, LLC who is not a named party in this action, nor has it been properly served with Summons in this matter, and for such other and further relief that the Court deems just and proper in the premises.



**RANDALL A. GILL**, OBA #10309  
2512 East 21<sup>st</sup> Street  
Tulsa, Oklahoma 74114-1706  
(918) 747-1958  
(918) 747-1108 fax

**CERTIFICATE OF MAILING**

This is to certify on the date listed below that a true and correct copy of the above and foregoing document was:

6/20/14

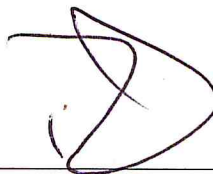
Mailed with postage prepaid thereon;

Faxed;

Hand Delivered

to the following person(s):

Daniel E. Smolen  
SMOLEN & SMOLEN, PLLC  
701 South Cincinnati Avenue  
Tulsa, OK 74119



Randall A. Gill



RECEIVED MAIL



7013 2630 0001 9813 8419

Smolen | Smolen | Roytman  
ATTORNEYS AT LAW

701 S. Cincinnati Ave. Tulsa, OK 74119  
www.ssrrok.com



H&H Boring Company  
c/o Ellen L. Hill  
Rt 5 Box 646  
Guthrie, OK 73044

RETURN TO SENDER  
NOT DELIVERABLE AS ADDRESSED  
UNABLE TO FORWARD

BC: 74119181301 32857-01235-22-03

NAME \_\_\_\_\_  
1st Notice \_\_\_\_\_  
2nd Notice \_\_\_\_\_  
Return \_\_\_\_\_  
UTF \_\_\_\_\_

SENDER: COMPLETE THIS SECTION

- ☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

H&H Boring Company  
c/o Ellen L. Hill  
Rt. 5 Box 646  
Guthrie, OK 73044

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent ☐ Addressee
- B. Received by (Printed Name) C. Date of Delivery
- D. Is delivery address different from item 1? ☐ Yes ☐ No  
If YES, enter delivery address below:

3. Service Type  
☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes ☐ No

2. Article Number  
(Transfer from service label)  
7013 2630 0001 9813 8419

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

RECEIVED  
APR 28 2014

BY: \_\_\_\_\_

IN THE DISTRICT COURT IN AND FOR ROGERS COUNTY  
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT  
ROGERS COUNTY OKLAHOMA

APR 15 2014

DEDRICK D. REED,

Plaintiff,

vs.

(1) H & H BORING CO., a domestic  
for profit business corporation

Defendant.

KIM HENRY, COURT CLERK

CASE NO. **CJ-2014-157**

ATTORNEY LIEN CLAIMED

PETITION

COMES NOW the Plaintiff, Dedrick Reed, through his attorneys of record, Daniel E. Smolen and Lauren G. Lambright, and brings this action against the Defendant, H & H Boring Co., for violations of his constitutionally protected rights arising out of his employment and termination by said Defendant.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a resident of Tulsa County.
2. Defendant is a corporation regularly doing business in Rogers County, Oklahoma.
3. The incidents and occurrences which form the basis of Plaintiff's action occurred in Rogers County.
4. This Court has jurisdiction and venue is proper in Rogers County.
5. Plaintiff filed a charge of discrimination against the Defendant with the Equal Employment Opportunity Commission ("EEOC"). A Notice of Right to Sue was received by each Plaintiff on or about January 16, 2014, and this Petition has been

filed within ninety days (90) of the receipt of the Notice of Right to Sue. As such, Plaintiff has complied fully with all prerequisites in this Court under Title VII.

6. Actual and compensatory damages are sought pursuant to 42 U.S.C. § 2000e, *et seq.* and 42 U.S.C. § 1981.

7. Punitive damages are sought pursuant to 42 U.S.C. § 1981.

8. Costs and attorney's fees may be awarded pursuant to 42 U.S.C. § 2000e, *et seq.*

**FACTS COMMON TO ALL CLAIMS**

9. Plaintiff is an African-American male.

10. Plaintiff was an employee of Defendant until his termination on or about January 28, 2013. Plaintiff was employed as a Crew Worker and Driver.

11. Upon his hire, Plaintiff was the only African American employee of the company. During his employment, he was subjected to disparate treatment on the basis of his race. Specifically, Plaintiff endured racial slurs, unequal terms and conditions of employment, and a hostile work environment in comparison to his Caucasian coworkers. Furthermore, when Plaintiff questioned this treatment and complained about it to his supervisor, he suffered retaliation at the hands of Defendant.

12. Specifically, one employee, "Zake," constantly called Plaintiff a "nigga" and also called him "Obama." Additionally, the owner, Mr. Gerald Hail, told Plaintiff to run at Hail's son's request because this was something Hail's son enjoyed watching. Even though Plaintiff complained to the owner, Gerald Hail, Defendant did nothing to address the derogatory language and hostile environment. The hostile



environment was severe and pervasive and made it difficult for Plaintiff to continue working.

13. In addition to the racial slurs Plaintiff endured, he was also treated differently. Specifically, Defendant informed Plaintiff that he would not receive insurance because the "Obama Health Plan" was too expensive. Yet no other similarly situated Caucasian employee was denied insurance on this basis. Plaintiff was treated worse than his Caucasian co-workers because of his race.

14. Defendant also lowered Plaintiff's pay by two dollars an hour without any warning or any deficient work performance on Plaintiff's part. Defendant also singled out Plaintiff as the only employee to be paid "under the table." No other Caucasian co-worker was treated this way and Defendant lowered Plaintiff's pay and paid him "under the table" because of Plaintiff's race.

15. When Plaintiff attempted to voice his concerns about the disparate treatment and rectify the situation, the Defendant retaliated against and fired him on January 28, 2013. Plaintiff's termination was a culmination of the racially hostile work environment, based upon his race and was in retaliation for Plaintiff reporting the race discrimination and hostile work environment he was experiencing.

**FIRST CLAIM FOR RELIEF**  
**DISCRIMINATION BASED ON RACE (TITLE VII)**

16. Plaintiff incorporates as if realleged the preceding paragraphs.

17. By terminating the Plaintiff and treating him differently than similarly situated Caucasian employees, the Defendant has violated Title VII of the Civil Rights Act of 1964.

WHEREFORE, Plaintiff prays for judgment against the Defendant for:

- a. Back pay and lost benefits; front pay until normal retirement
- b. Compensatory damages for his mental anguish, pain and suffering and other non-pecuniary losses;
- c. Punitive damages for the intentional and knowing acts of discrimination committed by the management and executives at Joe Cooper Ford;
- d. His attorney fees and the costs and expenses of this action;
- e. Such other relief as the Court deems just and equitable.

**SECOND CLAIM FOR RELIEF**  
**42 U.S.C. § 1981**

- 18. Plaintiff incorporates as if realleged the preceding paragraphs.
- 19. By terminating the Plaintiff and treating him different than similarly situated Caucasian employees, the Defendant has violated 42 U.S.C. § 1981.

WHEREFORE, Plaintiff prays for judgment against the Defendant for:

- a. Back pay and lost benefits; front pay until normal retirement
- b. Compensatory damages for his mental anguish, pain and suffering and other non-pecuniary losses;
- c. Punitive damages for the intentional and knowing acts of discrimination committed by the management and executives at Joe Cooper Ford;
- d. His attorney fees and the costs and expenses of this action;
- e. Such other relief as the Court deems just and equitable.

**THIRD CLAIM FOR RELIEF**  
**HOSTILE WORK ENVIRONMENT (TITLE VII)**

- 20. Plaintiff incorporates as if realleged the preceding paragraphs.
- 21. The conduct and attitude of Plaintiff's supervisors and coworkers toward Plaintiff combined with their disparaging remarks regarding Plaintiff's race were so

severe and pervasive that they altered the conditions of employment and created a hostile working environment.

22. By subjecting Plaintiff to a hostile work environment based upon race and failing to ensure a non-hostile work environment, and ultimately terminating the Plaintiff's employment, the Defendant has violated Title VII of the Civil Rights Act of 1964.

WHEREFORE, Plaintiff prays for judgment against the Defendant for:

- a. Back pay and lost benefits; front pay until normal retirement
- b. Compensatory damages for his mental anguish, pain and suffering and other non-pecuniary losses;
- c. Punitive damages for the intentional and knowing acts of discrimination committed by the management and executives at Joe Cooper Ford;
- d. His attorney fees and the costs and expenses of this action;
- e. Such other relief as the Court deems just and equitable.

**FOURTH CLAIM FOR RELIEF**  
**RETALIATION (TITLE VII)**

23. Plaintiff incorporates as if realleged the preceding paragraphs.

24. Plaintiff complained about the disparity in treatment and hostile work environment based upon his race.

25. By terminating Plaintiff's employment in retaliation for his complaints regarding the unfair treatment and hostile work environment, Defendant has violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-3(a).

WHEREFORE, Plaintiff prays for judgment against the Defendant for:

- a. Back pay and lost benefits; front pay until normal retirement
- b. Compensatory damages for his mental anguish, pain and suffering and other non-pecuniary losses;



- c. Punitive damages for the intentional and knowing acts of discrimination committed by the management and executives at Joe Cooper Ford;
- d. His attorney fees and the costs and expenses of this action;
- e. Such other relief as the Court deems just and equitable.

**FIFTH CLAIM FOR RELIEF**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

- 26. Plaintiff incorporates as if realleged the preceding paragraphs.
- 27. The Defendant's actions of intentional and malicious discrimination and retaliation are extreme and outrageous and have caused severe emotional and psychological damage to the Plaintiff.
- 28. The Defendant intentionally or recklessly caused severe emotional distress to Plaintiff beyond which a reasonable person could be expected to endure.

WHEREFORE, Plaintiff prays for judgment against the Defendant for:

- a. Back pay and lost benefits; front pay until normal retirement
- b. Compensatory damages for his mental anguish, pain and suffering and other non-pecuniary losses;
- c. Punitive damages for the intentional and knowing acts of discrimination committed by the management and executives at Joe Cooper Ford;
- d. His attorney fees and the costs and expenses of this action;
- e. Such other relief as the Court deems just and equitable.

Respectfully submitted,

  
Daniel E. Smolen, OBA# 19943  
SMOLEN & SMOLEN, P.L.L.C.  
701 S. Cincinnati Ave.,  
Tulsa, OK 74119  
P: (918) 585-2667  
F: (918) 585-2669  
Attorneys for Plaintiff

IN THE DISTRICT COURT IN AND FOR ROGERS COUNTY  
STATE OF OKLAHOMA

DEDRICK D. REED,

Plaintiff,

vs.

(1) H & H BORING CO., a domestic  
for profit business corporation

Defendant.

CASE NO.

CJ-2014-157

ATTORNEY LIEN CLAIMED

**ORIGINAL SUMMONS**

**SERVE BY U.S. CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

H & H Boring Co.  
c/o Ellen L. Hill  
Rt. 5 Box 646  
Guthrie, OK 73044

To the above-named Defendant(s)

You have been sued by the above named plaintiff(s), and you are directed to file a written answer to the attached petition and order in the court at the above address within twenty (20) days after service of this summons upon you exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorney for the plaintiff. Unless you answer the petition within the time stated judgment will be rendered against you with costs of the action.

Issued this 15<sup>th</sup> day of April, 2014

Kim Henry  
County Court Clerk

By

David Davis  
Deputy Court Clerk

(Seal)

This summons and order was served on

\_\_\_\_\_  
(Signature of person serving summons)

YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THIS SUMMONS.

**Return ORIGINAL for filing.**

\_\_\_\_\_, I served \_\_\_\_\_ by leaving a copy of said summons with a copy of the attached Petition at \_\_\_\_\_, which is his/her dwelling house or usual place of abode, with \_\_\_\_\_, a person then residing therein, who is fifteen (15) years of age or older.

**NOT FOUND**

Received this Summons this \_\_\_\_\_ day of \_\_\_\_\_, 2014. I certify that the following persons of the defendant within named not found in said County:

**FEEES**

Fee for service \$ \_\_\_\_\_, Mileage \$ \_\_\_\_\_,  
Total \$ \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

By:

Sheriff of \_\_\_\_\_ County.

**Exhibit 2**

IN THE DISTRICT COURT IN AND FOR ROGERS COUNTY  
STATE OF OKLAHOMA

<b>DEDRICK D. REED,</b>	)	
	)	
Plaintiff,	)	
	)	Case No. CJ-2014-157
vs.	)	
	)	
<b>H &amp; H BORING CO.,</b> a domestic	)	
for profit business corporation,	)	
	)	
Defendant.	)	

**AFFIDAVIT OF GERALD HAIL**

**GERALD HAIL**, being first duly sworn upon oath states as follows:

1. H & H Road Boring Company, LLC is not related, nor do I have any knowledge of H & H Boring Company. H & H Boring Company which apparently operates out of Guthrie, Oklahoma. I have no contact affiliation or association with H & H Boring Company.
2. The original Summons delivered to H & H Road Boring Company, LLC was addressed to H & H Boring Company c/o Ellen L. Hill, Route 5, Box 646, Guthrie, OK 74346. The lawsuit is filed against H & H Boring Company, not H & H Road Boring Company, LLC.
3. H & H Road Boring Company, LLC is located at 14157 East 580 Road, Inola, OK 74036.
4. I am the manager of the LLC known as H & H Road Boring Company, LLC.
5. I have no affiliation, ownership or control of H & H Boring Company in Guthrie, OK.
6. Affiant further sayeth not.

  
\_\_\_\_\_  
**GERALD HAIL**

**SUBSCRIBED AND SWORN** to before me, the undersigned Notary Public this 20th day of June, 2014.



  
\_\_\_\_\_